



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

**TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 080031**

Petitioner, Earl Cate, applied to the Building Commissioner for permission to demolish existing garages; to construct new retaining walls; to establish and maintain an open-air parking lot including pertinent accessory structures and do site improvements at 1525 Beacon Street. The application was denied and an appeal was taken to this Board.

On June 26th, 2008 the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed September 18th, 2008 at 7:30 p.m. on the 2nd floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to its attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on August 28th and September 4th, 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

**LEGAL NOTICE
TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEAL**

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **EARL M. CATE**

Location of Premises: **1525 BEACON ST BRKL**

Date of Hearing: **09/18/2008**

Time of Hearing: **7:30 p.m.**

Place of Hearing: **Main Library, 2nd. floor**

A public hearing will be held for a variance and/or special permit from

- 1) **5.09.2.a&d; Design Review, Special Permit Required.**
- 2) **5.90; Minimum Landscaped Open Space, Variance Required.**
- 3) **5.91; Minimum Open Space, Variance Required.**
- 4) **For the Design of All Off-Street Parking Facilities;**
6.04.2.d, Variance Required.
6.04.2.f, Variance Required.
6.04.3, Special Permit Required.
6.04.4.b, Variance Required.
6.04.4.f, Special Permit Required.
6.04.5.b, Variance Required.
6.04.7, Variance Required.
6.04.9.b, Variance Required.
6.04.12, Special Permit Required.
- 5) **8.0202; Alteration or Extension, Special Permit Required** of the Zoning By-Law to demolish the existing garages; to construct new retaining walls; to establish and maintain an open-air parking lot including pertinent accessory structures and site improvements at **1525 BEACON ST BRKL.**

Said Premise located in an **M-1.5 (Apartment House)** Residence district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

**Enid Starr
Jesse Geller**

Robert De Vries

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Enid Starr and Board Members, Rob DeVries and Kathryn Ham. The petitioner, Earl Cate, was present and represented by Apostolos M. Antonopoulos, PE, 39 Roberts Road, Cambridge, MA 02138.

Mr. Antonopoulos described the site and neighborhood at 1525-1527 Beacon Street as a three and a half story brick residential building with 12 units, located near Fairbanks Street in Washington Square. A one-story concrete masonry garage for eight cars runs along the rear property line from one side of the property to the other. There are also four open air parking spaces and one additional space in a single car garage under the rear of the building. A 10' wide alleyway shared with the abutting property leads to the parking area. He said that his client, Earl Cate proposes to demolish the rear one-story eight bay garage and replace it with eight open-air parking spaces. The rear retaining wall will be partially rebuilt, and a privacy fence is also proposed. The location of the other open air parking spaces on the lot will remain unchanged. Mr. Antonopoulos said that the existing garage is built of concrete masonry walls and a concrete roof slab. He reported that there is serious structural damage to both the roof framing and the supporting walls. He said that at the rear and left side of the property there is a retaining wall. The rear wall is composed of walls built at three different times. The original wall at the bottom is constructed of concrete. A concrete block wall about three feet high was added on top of the original wall to raise the grade of the parking lot. A third wall about six feet tall was then added to build the garage roof. The retaining wall is damaged, possibly by the additional load imposed by the two additions. He said he recommended that the concrete roof and the upper six foot wall be demolished and an exploratory pit be excavated to

determine the construction of the retaining wall and make repairs as necessary. He said that he thought all the requested relief could be granted by special permit. Mr. Antonopoulos said they needed special permit relief under Section 5.09.2. a & d, Design Review, Section 6.04.12, Waiver of Dimensional requirements and Section 8.02.2 Alteration or Extension of a pre-existing, non-conforming structure.

The Chairman asked what provisions are being made with respect to drainage. Mr. Antonopoulos responded that there is currently a catch-basin in front of the garage and the post-construction paving will slope toward the existing basin. He said that the capacity of the existing basin will be investigated during construction and it may need to be repaired or replaced. Mr. DeVries asked about the extent of excavation required at the site, parking of cars during construction and neighborhood disruption. Mr. Antonopoulos responded that if relief is granted by the Board, on-street parking permits will be requested from the DPW for use during the period of construction. As to disruption, he said that the entire demolition/excavation process will take place from the property of the petitioner although access to neighboring properties will be required in order to protect the neighboring properties from potential damage. Mr. DeVries inquired as to the finished surface of the new concrete retaining wall given its size and exposure to the neighbors. Mr. Antonopoulos said that they planned on using conventional structural concrete forms and the resultant finish. However, he said they could consider other finishes. The Chairman recommended making the finish of the exposed concrete wall subject to the review and approval of the Assistant Director for Regulatory Planning and Mr. DeVries agreed.

The Chairman asked whether anyone wished to speak in favor or in opposition to the proposal. John Daniels of 113-115 Briggs Road, the abutter directly to the south, said that he

had several questions. Referring to the submitted plans, he described the location of his garage in relation to the proposal. Because of the proximity to the subject garage, about 18", he was very concerned about the condition of the existing retaining wall to which the new wall would be attached. He said he doubted that the new wall could retain the existing wall due to its deteriorated condition. Mr. Antonopoulos responded that the existing retaining wall is leaning because of the pressure from the weight of the walls and roof above and he expected this condition would improve with their removal. He said part of the existing wall is being removed and replaced by one that is appropriately reinforced. Mr. Daniels said that he doubted the feasibility of the construction given the proximity to his property. He said he was concerned about the weight and vibration imposed during construction. Mr. Soltz of 1521 Beacon Street inquired about a deteriorated concrete barrier between the properties and the subsequent pressure toward his property. The Chairman responded that the existing conditions are potentially unsafe and to rectify the situation, demolition and reconstruction must take place. She said she would leave it to the Building Commissioner and Town Engineering Department to assure that it is done in a safe manner.

Lara Curtis, Senior Planner, delivered the findings of the Planning Department:

Section 5.09.2. a & d- Design Review

This property is located on Beacon Street and is therefore subject to design review. Comments on the most relevant sections of 5.09. 4, Design Standards, follow:

- a) *Preservation of Landscape:* There is no existing landscaping in the rear yard and none is proposed. The landscaping on the front of the building could be improved
- b) *Relation of Buildings to the Environment:* The garage serves to shield the parking from the abutters to the rear and surrounding upper story apartment dwellers
- e) *Circulation:* the demolition of the garage will make it easier for the eight cars to maneuver into and out of parking spaces. The width of the driveway is substandard but is not changing.

Section 5.90 - Minimum Landscaped Open Space

Section 5.91 – Minimum Usable Open Space

There is no landscaped or usable open space to the rear of the building where there is parking. This is a preexisting non-conforming condition which will not be changed by this proposal. Two small beds of landscaping are located in front of the Beacon Street side and the plantings could be improved.

Section 6.04.2.d&f, 3, 4b& f, 5b, 7, 9b, 12. – Design of All Off Street Parking Facilities

Aisle width (required 20'), side and rear yard setbacks (required 5'), and parking within 10' of windows of habitable space are all pre-existing non-conforming conditions and not changed by this proposal. Under Section 6.04.12, the Board may waive by special permit dimensional requirements for required parking areas where they serve existing buildings.

Section 8.02.2 – Alteration or Extension – A special permit is required for alterations to a pre-existing non-conforming structure.

Ms. Curtis said that the Planning Board supported the proposal to demolish a garage that has been found to be unsafe by the Building Commissioner and not historically significant by the Preservation Commission. The open air parking area will make maneuvering into and out of parking spaces easier than with the garage structure with its columns dividing the eight parking bays. The Planning Board did have some concerns about the location of one of the parking spaces due to access issues for other vehicles and its proximity to the abutter. The applicant has agreed to relocate the space. Therefore, she said, the Planning Board recommended approval of the plans for 1525-27 Beacon Street, Brookline MA 02446", prepared by Antonopoulos Company Inc for Kilem Management Corp., dated April 25, 2008 and the "Site Plan, Brookline, MA, showing proposed conditions at #1527 Beacon Street" by VTB Associates, Revised; October 14, 2006, subject to the following conditions:

1. Prior to issuance of a building permit, a final parking lay-out plan, including relocating parking space (D), shall be submitted for review and approval of the Assistant Director of Regulatory Planning.
2. Prior to issuance of a building permit, a final site plan, showing wheel stops, landscaping and non-scaleable attractive fencing, other than chain link, shall be

submitted for review and approval of the Assistant Director of Regulatory Planning.

3. Prior to issuance of a building permit, a drainage plan shall be submitted for the review and approval of the Director of Transportation and Engineering.
4. Prior to issuance of a building permit, a Construction Management Plan, including method of construction and access and protection of abutters' property, shall be submitted for the review and approval of the Building Commissioner.
5. No more than 13 vehicles shall be parked on the property.
6. The parking spaces shall first be offered to the residents of the dwelling at 1525-27 Beacon Street.
7. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or professional land surveyor; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chair called upon Michael Shepard, Building Commissioner, to deliver the Building Department report. Mr. Shepard stated that the proposal to demolish the existing structure has been an issue for quite some time. He said that back in 1998 the owner was cited for the unsafe structure. Over the ensuing years various proposals were brought forward but, in his opinion the entire removal of the structure and investigation of conditions is the most prudent course of action. He said he would recommend that the structural engineer be present on site during the demolition and exploration phases of the project. He said that this was important due to the proximity of neighboring structures and may help mollify the concerns of the abutters. He said that the Building Department is supportive of the proposal and is in agreement with the conditions recommended by the Planning Department.

The Chair asked whether the petitioner had any additional testimony and Mr. Antonopoulos said they did not.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant special permits in accordance with Section

5.09.2. a & d, Section 6.04.12 and Section 8.02.2 of the Zoning By-law and made the following findings pursuant to Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1. **Prior to issuance of a building permit, a final parking lay-out plan, including relocating parking space (D), shall be submitted for review and approval of the Assistant Director of Regulatory Planning.**
- 2. **Prior to issuance of a building permit, a final site plan, showing wheel stops, landscaping, including the areas in front of the building, an extended wall to block headlight glare on abutting properties, and treatment of exposed structural concrete prepared by a materials technologist, shall be submitted for review and approval of the Assistant Director of Regulatory Planning.**
- 3. **Prior to issuance of a building permit, a drainage plan shall be submitted for the review and approval of the Director of Transportation and Engineering.**
- 4. **Prior to issuance of a building permit, a Construction Management Plan, including method of construction, access and protection of abutters' property, debris removal, noise and dust abatement, shall be submitted for the review and approval of the Building Commissioner.**
- 5. **No more than 13 vehicles shall be parked on the property.**
- 6. **The parking spaces shall first be offered to the residents of the dwelling at 1525-27 Beacon Street.**
- 7. **Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or professional land surveyor; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

8. The petitioner shall provide continuous onsite representation by a registered structural engineer, during the demolition, excavation and exploration phases of the project.



Enid Starr, Chairman

Filing Date: October 16, 2008

A True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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